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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/482,773	01/13/2000	John D. Dreher	2870/220	7449
26646 7590 12/31/2008 KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004				
EXAMINER YU, GINA C				
ART UNIT		PAPER NUMBER		
1611				
MAIL DATE		DELIVERY MODE		
12/31/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Continuation of No. 2:

Receipt is acknowledged of appeal brief filed on December 9, 2008. The Office will take an appropriate action in response in due time.

Continuation of No. 11:

Rejection under 35 U.S.C. 102 (b)

Applicant asserts that the user population of the Kimura invention and the present invention do not overlap because the prior art is directed to adjust a light blue hyperchromatic portion of the skin. Applicant asserts that the symptom which the prior art is intended to treat is prevalent to a limited population, i.e., Asian females; applicant also argues that Asian females should be excluded from the group of people who exhibit normal progress of skin aging as the entire Asian female race somehow tends to avoid sun. The arguments lack any sound evidentiary support. All human race, even those with hyperchromatic condition, regardless of gender and race, are naturally and unavoidably subject to skin aging.

Rejection under 35 U.S.C. 103 (a)

Applicant asserts that the rejection is somehow based on a notion that the Hineno ('174) somehow teaches using any colorant in a composite powder for any purpose. Examiner respectfully disagrees, as the rejection clearly discussed that the Hineno is specifically directed to using interference pigments to hide wrinkles and lines, as applicant has done in this case; and blue and violet (or purple) interference pigments are also disclosed in the prior arts. Applicant also asserts that the reference suggests that no other interference pigments but red would be effective to hide aging skin. The

argument is unpersuasive, as it is well settled in patent law that disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or nonpreferred embodiments. In re Susi, 440 F.2d 442, 169 USPQ 423 (CCPA 1971). Makeup cosmetics are made in a variety of colors to accommodate various skin colors and tones. It is obvious that a reasonable ordinary skill in the art would have looked for differently colored interference pigments to treat the wrinkles and lines of the subjects of different colors, and the claimed invention is viewed an obvious variation of the combined teachings of the prior arts.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GINA C. YU whose telephone number is (571)272-8605. The examiner can normally be reached on Monday through Friday, from 9:00AM until 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau can be reached on 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gina C. Yu/  
Primary Patent Examiner, Art Unit 1611